

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

MACK WELLS

PETITIONER

VS.

CIVIL ACTION NO. 3:11cv392-DPJ-FKB

RONALD KING

RESPONDENT

REPORT AND RECOMMENDATION

This cause is before the Court on the petition for writ of habeas corpus filed by Mack Wells and Respondent's motion to dismiss the petition as untimely. Petitioner has not responded to the motion. Having considered the motion, the undersigned recommends that it be denied.

Petitioner is currently serving two life sentences without parole—one for a 1995 murder conviction, and one for a 1995 conviction for aggravated assault. In the present motion, Respondent argues that Wells' challenge to his aggravated assault conviction is time-barred pursuant to 28 U.S.C. § 2244(d).

The undersigned agrees that a petition challenging the aggravated assault conviction would be time-barred. Indeed, in the pending case of *Mack C. Wells v. Ron King*, No. 3:11cv264-WHB-LRA (S.D. Miss. Filed May 5, 2011), in which Wells seeks habeas relief regarding the aggravated assault conviction, another magistrate judge in this court recently recommended dismissal of the petition as time-barred.¹ In the present petition, however, Wells challenges not the aggravated assault conviction, but his murder conviction. While it appears that the present petition may likewise time-barred, this issue

¹Report and Recommendation filed Nov. 14, 2011 (dkt. No. 6).

has not been addressed by Respondent. Accordingly, the undersigned recommends that the motion to dismiss be denied and that Respondent be directed to file an answer or other response to the petition within thirty days.

The parties are hereby notified that failure to file written objections to the findings and recommendations contained in this report and recommendation within fourteen days of being served with a copy hereof will bar an aggrieved party, except upon grounds of plain error, from attacking on appeal proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. § 636; *Douglass v. United Service Automobile Ass'n*, 79 F.3d 1415 (5th Cir. 1996).

Respectfully submitted, this the 7th day of December, 2011.

/s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE